

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

PAINTERS DISTRICT COUNCIL NO. 2, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:07CV00704 JCH
)	
MCCOY DRYWALL, INC., et al,)	
)	
Defendant.)	

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS
MOTION TO COMPEL POST-JUDGMENT DISCOVERY**

Plaintiffs filed this original action pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001, *et seq.*, and the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. §§ 141, *et seq.* A Consent Judgment was issued on March 13, 2008 in favor of Plaintiffs and against Defendant McCoy Drywall, Inc. in the amount of \$50,480.41. The Consent Judgment was signed on behalf of Defendant by its President, Harold L. McCoy.

Plaintiffs' attempts to recover the full amount of the Consent Judgment were unsuccessful. On October 28, 2009 Plaintiffs filed a Motion for a Creditor's Bill in Equity and to Pierce the Corporate Veil. [Doc. No. 22]. After being fully briefed, the Court Granted Plaintiffs' Motion. On December 18, 2009 the Court found that Greenway Drywall, Harold McCoy and Darlene McCoy are alter-egos of McCoy Drywall and, as such, are liable, jointly and severally, for the balance of the Consent Judgment against McCoy Drywall. [Doc. No. 29]. On January 26, 2010, in a continued effort to collect the balance of the Consent Judgment, Plaintiffs sent individual Requests for Production to McCoy Drywall, Inc., Greenway Drywall, LLC, Harold McCoy and Darlene McCoy

(hereinafter referred to collectively as “Defendants”), pursuant to Fed. R.Civ.P. 69 and 34. The first and last page of each Request is attached hereto, collectively, as Exhibit A.

Rule 69(a) of the Federal Rules of Civil Procedure provides that a “money judgment is enforced by a writ of execution, unless the court directs otherwise.” Rule 69(a)(1), Fed.R.Civ.P. Rule 69 further provides that in a procedure on execution, and in proceedings in aid of execution, a judgment creditor “may obtain discovery from any person - including the judgment debtor - as provided in [the Federal Rules of Civil Procedure] or by the procedure of the state where the court is located.” Rule 69(a)(2), Fed.R.Civ.P.

In the absence of a controlling federal statute, a district court “has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law.” H.H. Robertson Co., Cupples Products Div., vs. V.S. DiCarlo General Contractors, Inc., 994 F.2d 476, 477 (8th Cir.) (citation omitted), *cert. denied*, 510 U.S. 1019 (1993).

Plaintiffs seek post-judgment production of certain documents and information in aid of execution of their judgment. This procedure is appropriate pursuant to F.R.C.P. 69 and 34. Defendants were properly given notice of Plaintiffs’ Requests to produce, but have failed to fully respond.

On March 9, 2010 Plaintiffs received a response from Defendants’ attorney with enclosures purporting to be answers to Plaintiffs’ Requests for Production [Exhibit B]. The response contains no objections to any of the Plaintiffs’ Requests. Further, the response does not fully address the Plaintiffs’ Request for Production. Specifically, the Defendants have failed to provide *any* information to Plaintiffs’ following requests:

5. Copies of any and all records related to any construction equipment owned by [Defendants], or in which [Defendants], [have or have had] an interest for the years 2008 to date of this Request, including titles, leases, loans or other security interests;

6. Copies of all records related to the transfer or sale of any assets of [Defendants] to any individual or individuals, corporation, partnership, limited liability company, bank or other creditor or business entity, including contracts, bills of sale, mortgages, liens, UCC statement and any and all other evidence of such transfers, from the year 2008 to the date of this Request;

8. Copies of certified payroll for all projects on which [Defendants] [were] a painting contractor[s] or painting subcontractor[s] for each month from January 1, 2008 to the date of this Request;

9. Copies of all of [Defendants]' cash disbursement records for the period of January 1, 2008 through the present;

11. Copies of [Defendants]' ledgers for the period of January 1, 2008 through the present;

12. Checks or Money Orders or other documents or receipts evidencing any source of income, as defined by the Internal Revenue Code, or payments, since January 1, 2008; and

14. Copies of any Bonds, including security Bonds and construction Bonds, held by [Defendants] or to which [Defendants] [are] beneficiary[ies], either directly or through a Trust.

15. Copies of any certificates of deposit, wherever located, held by [Defendants] or to which [Defendants] [are] beneficiary[ies], either directly or through a Trust.

16. Copies of any statements from a retirement account, including IRA's and Pensions, to which [Defendants] [are] an owner[s], or beneficiary[ies], either directly or through a Trust.

17. Copes of any documents or statements showing the maintenance, rental or purchase of a safety deposit box, or safety deposit boxes, including the name of the institution where the safety deposit box or boxes are maintained to which [Defendants]' [are] the owner[s], lessee[s], or beneficiary[ies], either directly or through a Trust.

WHEREFORE, Plaintiffs hereby request this Court grant Plaintiffs' Motion to Compel Discovery. In addition, Plaintiffs' request this Court assess sanctions against Defendants for failing to cooperate in discovery and award Plaintiffs' their attorneys' fees incurred in compelling discovery.

Respectfully submitted,

BARTLEY GOFFSTEIN, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2010, the foregoing was filed electronically with the Clerk of Court, to be served by operation of the Court's electronic filing system upon all attorneys of record:

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/s/ James P. Faul